

1827.374-2 Contracts placed by or for other Government agencies.

FAR 27.304-2 shall apply. (See also 1827.373(c)(2).)

[54 FR 39373, Sept. 26, 1989]

1827.374-3 Contracts for construction work or architect-engineer services.

(a) If a contract for construction work or architect-engineer services with other than a small business firm or a nonprofit organization has as a purpose the performance of experimental, developmental, or research work, or test and evaluation studies involving such work, and the contract calls for or can be expected to involve the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), the contract shall include the clause prescribed at 1827.373(b) except as provided in FAR 27.304-3(b).

(b) For all other contracts for construction work or architect-engineer services, FAR 27.304-3 shall apply.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

1827.374-4 Subcontracts.

(a) The policies and procedures in this subpart apply to all contracts at any tier. Hence, unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(1) The clause at 1852.227-70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.373(b)(1) through (6).

(2) The clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), modified in accordance with 1827.373(a), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of

experimental, developmental, or research work.

(b) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section, in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the installation's Patent Counsel.

(c) Contractors and subcontractors may not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from such subcontracts.

1827.374-5 Appeals.

FAR 27.304-5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

1827.375 Administration of the patent rights and new technology clauses.**1827.375-1 New technology and patent rights follow-up.**

(a) It is important that the Government and the contractor know, protect, and exercise their rights in inventions, discoveries, improvements, and innovations made in the performance of work under NASA contracts in order to ensure their expeditious availability to the public; foster commercial use; enable the Government, contractor, and public to avoid unnecessary payment of royalties; and defend themselves against claims and suits for infringement. To attain these ends, contracts having the clause at 1852.227-70, New Technology, the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), or any other patent rights clause (hereinafter all collectively referred to as "the clause" unless otherwise indicated), should be so administered that—

(1) Reportable items and subject inventions are identified, disclosed, and reported as required by the clause, and requests for waiver of title or election of title, when appropriate, are timely made;

(2) The rights of the Government in reportable items and subject inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of reportable items and subject inventions is achieved.

(b)(1) For each contract containing the clause, the contracting officer shall designate representatives (hereinafter referred to as the "New Technology Representative" and the "Patent Representative"; see 1827.373(e)) to administer the clause, protect the Government's rights, and take other actions in relation thereto. The New Technology Representative shall be the Technology Utilization Officer or the staff member (by titled position) having cognizance of technology utilization matters for the installation concerned. The Patent Representative shall be the Patent Counsel (by titled position) having cognizance of patent matters for the installation concerned. Designation of these representatives in the contract is made in the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative.

(2) The contracting officer shall—(i) Furnish the New Technology Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the New Technology Representative indicates otherwise;

(ii) Notify the New Technology Representative as to which installation organizational element has technical cognizance of the contract; and

(iii) Furnish the Patent Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim progress reports, and other pertinent material provided under the contract, unless the Patent Representative indicates otherwise.

(3) The New Technology Representative and the Patent Representative shall:

(i) Maintain complete files of correspondence and other actions involving their respective administration of the clause; and

(ii) Furnish copies of documents appropriate for inclusion in the general contract files to the contracting officer.

(4) If a subject invention is made under funding agreements of more than one agency, the agencies shall designate one agency as responsible for administering the rights of the Government in the invention.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

1827.375-2 Follow-up by contractor.

(a) *Contractor procedures.* (1) Each contractor other than a small business firm or a nonprofit organization shall establish and maintain active and effective procedures to ensure that reportable items are promptly identified, reported, and disclosed in order to meet the requirements of the clause. These procedures must include the maintenance of:

(i) Laboratory notebooks or equivalent records and any other records reasonably necessary to document the conception and/or first actual reduction to practice of reportable items; and

(ii) Records showing that the procedures for identifying and disclosing reportable items are followed.

Upon request, the contractor shall furnish the contracting officer or a designated representative, for evaluation and a determination as to their effectiveness, a description of the procedures.

(2) In order to ensure adequate understanding of and commitment to the reporting requirements of the New Technology clause, prospective contractors under any contract with an estimated cost of \$2,500,000 or more (or a lesser dollar amount where considered appropriate) that contains the clause may be required to submit for approval a detailed plan for new technology reporting (see 1835.003-71).

(b) *Contractor reports.* (1) During the period of performance of each contract or subcontract, the contractor or subcontractor is required to submit to the New Technology Representative (or